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GENERAL UNDERTAKING

This Undertaking is made the 1st day of January, 1987 between:

(1) The Society of Lloyd's incorporated by Lloyd's Act 1871 ("Lloyd's" (which expression shall include any officer or employee of Lloyd's, any person in or to whom whether individually or collectively any powers or functions are vested or delegated by or pursuant to Lloyd's Acts 1871-1982)) and

(2) Alan Richards (the "Member") on behalf of himself and his legal and personal representatives and successors.

WHEREAS:–

(A) The Lloyd's Acts 1871-1982 conferred powers on the Council of Lloyd's (the "Council") to make byelaws for the purposes provided in such Acts.

(B) Pursuant thereto the Council duly made the Membership Byelaw (No. 9 of 1984) on 12th November, 1984 (the "Byelaw") prescribing inter alia requirements to be satisfied or complied with as a continuing condition of membership of, and of underwriting insurance business at, Lloyd's.

(C) The Member is or, as the case may be, is to become a member of Lloyd's.

(D) Pursuant to the provisions of the Byelaw and in consideration of the Member's admission to membership of, and/or of underwriting insurance business at, Lloyd's or, as the case may be, continuing membership of, and/or of underwriting insurance at, Lloyd's, the Member and Lloyd's consider that it is in their respective interests to become parties to this Undertaking.

NOW THEREFORE IT IS AGREED as follows:–

1. Throughout the period of his membership of Lloyd's the Member shall comply with the provisions of Lloyd's

Acts 1871-1982, any subordinate legislation made or to be made thereunder and any direction given or provision or requirement made or imposed by the Council or any person(s) or body acting on its behalf pursuant to such legislative authority and shall become a party to, and perform and observe all the terms and provisions of, any agreements or other instruments as may be prescribed and notified to the Member or his underwriting agent by or under the authority of the Council.

2.1 The rights and obligations of the parties arising out of or relating to the Member's membership of, and/or underwriting of insurance business at, Lloyd's and any other matter referred to in this Undertaking shall be governed by and construed in accordance with the laws of England.

2.2 Each party hereto irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute and/or controversy of whatsoever nature arising out of or relating to the Member's membership of, and/or underwriting of insurance business at, Lloyd's and that accordingly any suit, action or proceeding (together in this Clause 2 referred to as "Proceedings") arising out of or relating to such matters shall be brought in such courts and, to this end, each party hereto irrevocably agrees to submit to the jurisdiction of the courts of England and irrevocably waives any objection which it may have now or hereafter to (a) any Proceedings being brought in any such court as is referred to in this Clause 2 and (b) any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the English courts shall be conclusive and binding upon each party and may be enforced in the courts of any other jurisdiction.

2.3 The choice of law and jurisdiction referred to in this Clause 2 shall continue in full force and effect in respect of any dispute and/or controversy of whatsoever nature arising out of or relating to any of the matters referred to in this Undertaking notwithstanding that the Member ceases, for any reason, to be a Member of, or to underwrite insurance business at, Lloyd's.

3. If any term of this Undertaking shall to any extent be invalid or unenforceable, the remainder of the Undertaking shall not be affected thereby and each term of this Undertaking shall be valid and be enforceable to the fullest extent permitted by law and a substitute provision shall be negotiated by the parties hereto to preserve as nearly as possible the original intent of this Undertaking.

IN WITNESS whereby the parties hereto have cause this Undertaking to be duly executed on the date first written above.

SOCIETY OF LLOYD'S

By: [SIGNED]
Authorised Signatory [SEAL]

By: A. RICHARDS
Member's Signature

[LETTERHEAD OF MINISTER FOR TRADE]

Ms Cathy Catterson
Clerk of Court
Ninth Circuit Court of Appeals
PO Box 193939
San Francisco, CA 94119-3939
United States of America

20th March 1997

Dear Ms. Catterson,

RE: ALAN RICHARDS v LLOYD'S OF LONDON
CASE NOS 95-55747, 95-56467

I am submitting this letter on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland (British Government) as amicus curiae in support of appellee, the Corporation of Lloyd's, Petitioner for Rehearing, or Rehearing en banc, in my capacity as the Minister responsible for the insurance sector in the United Kingdom, including the application of the Insurance Companies Act 1982 and other relevant insurance legislation.

The British Government is concerned that the majority opinion of the Court of Appeals may have misunderstood both the nature of the Lloyd's market and the critical role played by the Council of Lloyd's in the regulation of that market. Lloyd's description of that market and of the regulatory authority of the Council is accurate. I share their view that the majority opinion would impair the ability of the Council to exercise its regulatory authority.

The majority opinion appears to be based on the erroneous view that Lloyd's is simply a "business corporation"; and accordingly that the choice clauses contained in the general undertakings given by the plaintiffs are analogous to those contained in normal international commercial transactions. However, as the petition points out, the business of insurance

at Lloyd's is carried on by the members (Names) and not by the Corporation. The Corporation (to which the undertaking is given), is a distinct entity charged with regulatory functions, exercisable through the Council, which are conferred on it by the Lloyd's Acts 1871-1982. Those functions include in particular the establishment of byelaws, rules and regulations intended for the protection of Names' policyholders and are exercised in accordance with conditions imposed by and pursuant to the Insurance Companies Act 1982, which provides the framework for supervising all insurance companies in the United Kingdom. It is precisely the operation of this regime which justifies the exemption of Names from direct regulation as insurers by the Secretary of State (and is granted only so long as they remain members of Lloyd's and meet the specified statutory conditions). It also explains why the special position of Lloyd's (and in particular the ability of individual Names to write business in that market) is recognised under the European Union insurance Directives, which require every member State to ensure that its authorities have the necessary powers to supervise insurance undertakings with head offices in its territory. The most important of the regulatory functions contemplated by these Acts and Directives is the prudential one of ensuring that sufficient insurance funds are and will be available to meet policyholders' claims as and when they arise; and detailed arrangements governing the creation and protection of such funds are laid down by and pursuant to this legislation. It would be detrimental to this regulatory regime approved by Parliament if insurers, whether at Lloyd's or elsewhere, could frustrate the operation of those arrangements by invoking the assistance of courts in other jurisdictions in direct contravention of the choice clause contained in the General Undertaking.

It also appears that the majority opinion has placed some weight upon the immunities from suit afforded to the Council of Lloyd's under section 14 of the Lloyd's Act 1982. However, the reason for those immunities is simply to ensure that

the Council will not be deterred from exercising its regulatory powers by threats of action from those who might thereby be adversely affected. Comparable immunities are conferred upon other regulators in the United Kingdom, either expressly by statute or (as in the case of the Secretary of State) by virtue of judgments of the courts. As the majority opinion recognises, those immunities are confined to proceedings against the Corporation and even then do not extend to allegations of fraud, such as are being advanced by the plaintiffs in these proceedings. The British Government does not accept the suggestion that, apart from the area of immunity, the plaintiffs would find difficulty in pursuing those or other allegations in the English courts. Plaintiffs would receive fair, unbiased and speedy justice in English courts.

Yours sincerely,

/s/ ANTHONY NELSON

ANTHONY NELSON